



CNR: KAHC010115632018

NC: 2026:KHC:48992
WP No. 35159 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.35159 OF 2018 (GM-CPC)

BETWEEN:

SRI.NEELAKANTA
S/O LATE SRI.BYRAPPA
AGED ABOUT 64 YEARS
R/AT NO.4, APPURAYAPPA 'A' GALLI
MALDARPET
BENGALURU - 560 002

...PETITIONER

(BY SRI.MOYEENULLA ABBASI, ADVOCATE)

AND:

1. SMT.BHAGYALAKSHMI
W/O LATE SHANTHAPPA
AGED ABOUT 57 YEARS
2. SRI.SATISH
S/O LATE SHANTHAPPA
AGED ABOUT 38 YEARS
3. KUMARI BARATHI
D/O LATE SHANTHAPPA
AGED ABOUT 35 YEARS

RESPONDENT NOS.1 TO 3
ARE R/AT NO.3,
C/66, 2ND FLOOR, 5TH CROSS

Digitally signed
by CHAITHRA A
Location: HIGH
COURT OF
KARNATAKA



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KALIDASA LAYOUT, SRINAGAR
BENGALURU-560 050

- 4. SRI.NANJUNDAPPA
S/O LATE BYRAPPA
SINCE DEAD BY HIS LRS,
- 4(A) SMT.RATHNAMMA
W/O LATE B.NANJUNDAPPA
AGED ABOUT 66 YEARS
- 4(B) SMT. M.GOWRAMMA
D/O LATE B NANJUNDAPPA
AGED ABOUT 46 YEARS
- 4(C) SRI.N.KESHAVAMURTHY
S/O LATE B NANJUNDAPPA
AGED ABOUT 44 YEARS
- 4(D) SRI.N.VEERABHADRAPPA
S/O LATE B NANJUNDAPPA
AGED ABOUT 41 YEARS
- 4(E) SRI.N.LOKESH
S/O LATE NANJUNDAPPA
AGED ABOUT 36 YEARS
- 4(F) SRI.N.SHANKAR
S/O LATE NANJUNDAPPA
AGED ABOUT 33 YEARS
- 4(G). SRI.N.SHANTHAPPA
S/O LATE NANJUNDAPPA
AGED ABOUT 29 YEARS

LR 4(A) TO 4(G) ARE
R/AT NO.5, 1ST FLOOR



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17TH CROSS, 2ND MAIN
OPP. RENUKA YELLAMMA TEMPLE
BENGALURU-560 027.

5. SMT.VENKATAMMA
W/O LATE THIMMAIAH
SINCE DEAD BY HER LRS
- 5(A) SRI.T.PUTTARAJU
S/O LATE VENKATAMMA & LATE THIMMAIAH
AGED ABOUT 30 YEARS
- 5(B) SRI.ESHWAR
S/O LATE VENKATAMMA & LATE THIMMAIAH
AGED ABOUT 47 YEARS
- 5(C) SRI.KRISHNAMURTHY
S/O LATE VENKATAMMA & LATE THIMMAIAH
AGED ABOUT 44 YEARS
- 5(D) SRI.GURUMURTHY
S/O LATE VENKATAMMA & LATE THIMMAIAH
AGED ABOUT 42 YEARS

LR 5(A) TO (D) ARE R/AT NO.79,
1ST MAIN, 1ST CROSS, MSJ POST
8TH PHASE, J P NAGAR
BENGALURU-560 076

- 6 SMT.HEMAVATHI
W/O D.E.PUTTARAJU
D/O LATE BYRAPPA
AGED ABOUT 54 YEARS
R/AT: 25, 1ST MAIN, AMBEDKAR ROAD
RAMAMURTHY NAGAR
BENGALURU-560 036



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...RESPONDENTS

(BY SRI.VIKAS M, ADVOCATE FOR R.6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDERS PASSED BY IN FDP NO.118/2009 DATED 16.7.2018 I.A.NO.5 VIDE ANNEX-A I ADDL. CITY CIVIL AND SESSION JUDGE, BANGALORE AND SESSION JUDGE AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The petitioner, who is respondent No.2 in the Final Decree Proceedings (for short, 'FDP'), is before this Court calling in question the orders passed by the FDP Court on I.A.Nos.5 and 8.

2. I.A.No.5 was filed by the plaintiffs invoking Section 2 of the Partition Act, 1893 (for short, 'the Partition Act'), placing reliance upon the report submitted by the Court Commissioner. The Commissioner, on inspection and



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assessment of the subject property, has opined that the residential house, which forms the subject matter of the partition suit, is not capable of being conveniently divided by metes and bounds. On that premise, the plaintiffs sought a direction to invoke the provisions of the Partition Act and to proceed with sale of the property in accordance with law. The application was opposed by the petitioner principally on the ground that the Commissioner's report was submitted without notice to the petitioner or his counsel and, therefore, could not have been relied upon by the FDP Court.

3. I.A.No.8 was filed by the petitioner under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC'), contending that the preliminary decree was not executable and consequently seeking to set aside the same. The FDP Court, while considering I.A.No.5, accepted the report of the Commissioner and recorded a finding that the property was not capable of



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being conveniently divided by metes and bounds. Consequently, the FDP Court permitted the parties to work out their remedies in accordance with the provisions of the Partition Act.

4. Insofar as I.A.No.8 is concerned, the FDP Court has rejected the application by recording that the very contentions now sought to be urged by the petitioner had already been considered and negatived in the suit. The preliminary decree had thereafter been carried in appeal before this Court in RFA No.314/2009 and the judgment rendered therein had attained finality upon affirmation by the Hon'ble Supreme Court. The FDP Court, therefore, declined to entertain an application under Section 47 read with Section 151 of CPC seeking, in substance, to reopen the rights conclusively determined under the preliminary decree.



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5. Having heard the learned counsel for the parties and having examined the orders impugned herein, this Court finds no ground to interfere.

6. The preliminary decree determines the respective rights and shares of the parties. The stage of the final decree proceedings is to work out those rights and effectuate the decree in accordance with law. If, in the course of such proceedings, the Court finds that the property allotted for partition is incapable of convenient division by metes and bounds, the fact that the preliminary decree directs partition would not render the decree inexecutable. The law provides a machinery for such eventuality. The Partition Act is intended precisely to address cases where physical partition of the property is impracticable or would result in prejudice to the interests of the co-sharers.

7. Section 2 of the Partition Act enables the Court, where it is of the opinion that a division of the property



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cannot reasonably or conveniently be made and that a sale of the property would be more beneficial to all the shareholders, to direct sale of the property and distribution of the proceeds amongst the shareholders according to their respective shares. Thus, the finding regarding the indivisibility of the property is not an exercise in reopening the preliminary decree; it is only a step in the process of giving effect to the rights declared therein.

8. Equally, the statutory scheme under Sections 3 and 4 of the Partition Act protects the interests of the co-sharers and, in an appropriate case, members of the family. The consequence of directing sale does not result in extinguishing the rights of the petitioner without an opportunity to participate in the statutory process. The petitioner, being a co-sharer, would be entitled to avail himself of the remedies available under the Partition Act and participate in the process of sale/bidding in



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accordance with the procedure ultimately directed by the FDP Court.

9. The objection that the Commissioner's report was submitted without notice to the petitioner or his counsel, by itself, cannot furnish a ground to reject I.A.No.5. The Commissioner's report is only a piece of material placed before the Court. The determination whether the property is capable of convenient division is ultimately one for the Court to make. The FDP Court, upon consideration of the material before it, has recorded a categorical finding that the property is not divisible by metes and bounds. No material is placed before this Court to demonstrate that such finding is perverse or suffers from any jurisdictional error.

10. It is also necessary to bear in mind that the order allowing I.A.No.5 does not finally deprive the petitioner of his share in the property. The petitioner continues to retain all rights flowing from the preliminary



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decree. If the property is directed to be sold amongst the co-sharers in accordance with the statutory scheme, the petitioner would be at liberty to participate in the bidding and, if he so desires, make an appropriate bid for retaining the property. The other co-sharers, correspondingly, would be entitled to receive the consideration payable towards their determined shares in accordance with law.

11. The challenge to I.A.No.8 stands on an entirely different footing. The petitioner cannot, under the guise of an application under Section 47 read with Section 151 of CPC, seek to reopen the preliminary decree or reagitate issues which have already been adjudicated. Section 47 of CPC is intended to enable the executing Court to determine questions relating to the execution, discharge or satisfaction of the decree; it is not a provision enabling a party to unsettle the decree itself. The inherent power under Section 151 of CPC cannot also be invoked to



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circumvent the finality attached to a decree which has travelled through the appellate process.

12. In the present case, the preliminary decree has not merely remained unchallenged. It was the subject matter of RFA No.314/2009 before this Court and the decision rendered therein has subsequently been affirmed by the Hon'ble Supreme Court. The rights of the parties, therefore, stand conclusively determined. The FDP Court was fully justified in declining the petitioner's attempt to reopen those rights through I.A.No.8.

13. The distinction between the two applications is, therefore, material. I.A.No.5 seeks to facilitate implementation of the rights already declared under the preliminary decree by adopting the statutory mechanism available where physical partition is found to be impracticable. I.A.No.8, on the other hand, seeks to unsettle the very decree which has attained finality. The



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FDP Court has rightly permitted the former and rejected the latter.

14. This Court, exercising its supervisory jurisdiction, would not interfere with an order passed in final decree proceedings merely because another view may be possible. Interference is warranted only where the Court below has acted without jurisdiction, failed to exercise jurisdiction vested in it, or committed a patent error resulting in manifest injustice. No such circumstance is made out in the present case.

15. Consequently, this Court finds no illegality, perversity or jurisdictional infirmity in the orders passed by the FDP Court on I.A.Nos.5 and 8 warranting interference.

Accordingly, the writ petition stands ***dismissed***.

It is, however, made clear that the dismissal of this writ petition shall not come in the way of the petitioner



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participating in the further proceedings under the Partition Act, including the bidding process, if the FDP Court directs sale amongst the co-sharers, and availing all remedies available to him in accordance with law.

**SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE**